

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 461/2021**

Date of decision: 15th FEBRUARY, 2021

IN THE MATTER OF:

JASHIMA KHATOON

..... Petitioner

Through Mr. M.K. Arora, Advocate

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner has filed the instant petition under Section 439 Cr.P.C. seeking regular bail in FIR No.229/2019, dated 12.05.2019, registered at Police Station Moti Nagar, Delhi, under Sections 307/323/506/509 read with Section 34 IPC.

2. On a complaint from Anmol Tyagi stating that on 11/12.05.2019 his father Dhruv Raj Tyagi had taken his sister Nilika to Acharya Shri Bikshu Government Hospital, Moti Nagar, since she was not feeling well. It is stated that on the way back his sister told his father that she was teased by one Raja. The complaint States that after dropping her at home the complainant's father went to the house of Raja. It is stated in the charge-sheet that when Dhruv Raj Tyagi went to the house of Raja, Raja along with his brother Mohammad Shamse Alam @ Duggu started abusing and beating

them. The complainant also reached the scene of the occurrence. It is stated that after hearing the commotion Nillika also came to the spot. It is stated that Raja caught hold of the neck of Nillika and started misbehaving with her. It is stated that the petitioner herein, Jashima Khatoon, who is the mother of Raja came down the stairs along with Guddu/son of the petitioner, Rashida Khatoon/daughter of the petitioner and Mohammad Jahangir Alam. It is stated that the petitioner and Rashida caught Nillika from behind. It is stated in the complaint that Guddu had come down with a knife and he gave it to his brother Duggu. Duggu stabbed Dhruv Raj Tyagi multiple times. It is stated that the complainant's father was taken to the RML hospital, Delhi. FIR No.229/2019, dated 12.05.2019, was registered at Police Station Moti Nagar, Delhi, for offences under Sections 307/323/506/509 read with Section 34 IPC when Dhruv Raj Tyagi passed away Section 302 was added to the FIR.

3. The statements of the complainant and his sister Nillika under Section 161 and 164 Cr.P.C were recorded and the charge-sheet has been filed.

4. The petitioner is in judicial custody from 14.05.2019. The records indicate that the petitioner had filed an application in the court of Additional Session Judge, West District, Tis Hazari Courts, Delhi which was dismissed by an order dated 23.10.2020.

5. Mr. M.K. Arora, learned counsel for the petitioner contends that the petitioner is a lady. He states that the charge-sheet has been filed. He also states that the petitioner is in judicial custody for the last one year and eight months. He states that even charges have not been framed and there is no possibility of trial concluding in the near future. The learned counsel for the

petitioner strenuously contended that there are material contradictions in the statements of the complainant and his sister, Nillika given under Section 161 and Section 164 Cr.P.C. He states that a reading of the statements show that there was no motive for the petitioner to commit murder of the deceased. He states that in view of the material contradictions in the statements, the petitioner being a lady who is in custody for the last 20 months should be released on bail.

6. On the other hand, Ms. Kusum Dhalla, learned APP for the State opposes the bail contending that there are no contradictions in the statements of the complainant and his sister. He states that the two eye witnesses have categorically stated that the petitioner came down from her house along with the accused Guddu and Rashida/the daughter of the petitioner. Guddu was having a knife in his hand. It is stated that the co-accused Guddu gave the knife to his brother Duggu who stabbed the deceased. She would state that the petitioner stays in the same locality as the family of the deceased and therefore bail ought not to be granted.

7. Heard Mr. M.K. Arora, learned counsel appearing for the petitioner and Ms. Kusum Dhalla, learned APP appearing for the State and perused the material on record.

8. A perusal of the statements made by the complainant, Anmol Tyagi and his sister, Nillika shows that the statements are consistent with each other and there are hardly any material contradictions in their versions. The complainant, Anmol Tyagi has stated that when his father (deceased) came back from the hospital his sister, Nillika, went inside the house and his father went to the house of Raja because Nillika had told him that Raja had

made some obscene gestures to Nillika. It is stated that the deceased had gone to advise Raja not to repeat the incident. It is categorically stated that when the deceased reached the house of the accused they started abusing him and started assaulting him. It is stated that the complainant also reached there and tried save his father. It is stated that on hearing the commotion Nillika also reached there. It is stated by the complainant that the petitioner, Guddu and Guddu's sister Rashida came down, the petitioner caught hold of the hair of Nillika and Rashida caught her from behind and Guddu who had come down had a knife. He handed the knife to his brother Duggu and Duggu stabbed the deceased. More or less similar statement has been made by Nillika in her statements made under Section 161 and 164 Cr.P.C.

9. The parameters of granting bail have been laid down by the Supreme Court in a number of cases. In Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 the Supreme Court laid down the factors that must guide the exercise of the power to grant bail in the following terms :

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail

— more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a *prima facie* satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

10. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court observed as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being influenced; and*
- viii. danger, of course, of justice being thwarted by grant of bail.*

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

11. In Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 the Supreme Court observed as under:

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the

severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

12. The High Court, therefore, while granting bail has to keep in mind not only the nature of accusations but the severity of punishment, the apprehension of the evidence being tampered with and the apprehension of there being a threat to the complainant. The petitioner here has been accused of offences under Section 302. The punishment for offences under Section 302 is either life or death. The petitioner stays in the same locality as the family of the victim. Therefore there is a reasonable apprehension that if the petitioner is enlarged on bail, the petitioner will exert pressure on the victim and keeping the nature of the offences the petitioner can even threaten the witness. As stated above there is hardly any inconsistency in the statements made by the two eye witnesses. It cannot be said that the case against the petitioner is frivolous in nature or that it has been foisted on her.

A perusal of the incident shows that the entire family of the petitioner was a party to the offence wherein the father of the complainant was brutally stabbed to death. Applying the parameters laid down by the Supreme Court this Court is of the opinion that this is not a fit case to grant bail to the petitioner at this juncture. Considering the fact that the petitioner is a lady the trial court is requested to proceed ahead with the matter and conclude the trial as expeditiously as possible

13. Accordingly, the petition is dismissed along with the pending application, if any.

SUBRAMONIUM PRASAD, J.

FEBRUARY 15, 2021

Rahul